RULES
OF
TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF COMMUNITY ASSISTANCE

CHAPTER 1200-22-2
STATE GRANTS

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1200-22-2-.01 PURPOSE AND POLICY. The primary purpose of these rules is to provide financial assistance to municipalities to plan, design and construct wastewater treatment works. Such assistance shall be provided in order to meet the requirements of state laws to protect public health and water quality throughout the State of Tennessee. It is further intended that such assistance be coordinated with other state and federal programs of loans or grants for the construction of wastewater treatment works.

Authority: *T.C.A. §§68-13-801 et seq., 68-13-802, 68-13-804, 68-13-805, 68-13-809, 68-13-810, 68-13-1002, and 68-13-1005.* ***Administrative History:*** *Original rule filed August 30, 1985; effective September 29, 1985. Amendment filed July 14, 1987; effective August 29, 1987. Amendment filed September 18, 1989; effective November 2, 1989.*

1200-22-2-.02 DEFINITIONS. Unless the context requires otherwise as used in this chapter the following words and terms mean:

(1) Act. The Clean Water Act, 33 U.S.C. 1251 et seq., as amended.

(2) Ad valorem tax. A tax based upon the value of real property.

(3) Ability to Pay Index (ATPI). An economic index developed by the Center for Business and Economic Research, the University of Tennessee, as certified by the Department.

(4) Allowable costs. Fair and reasonable amount paid for eligible treatment works planning, design and construction.

(5) Allowance. The portion of a grant for preliminary engineering or construction engineering.

(6) Alternative technology. Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed lands; containment ponds; sludge composting and drying prior to land application; self sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and onsite systems. Alternative technology also includes a wastewater collection system other than conventional system for a community with population of less than 3,500 persons, according to the 1980 federal census, or any subsequent decennial federal census. This includes, but is not limited to, small diameter pressure, gravity and vacuum sewers carrying partially or fully treated wastewater and which demonstrate a significant savings in the life cycle cost of the project when compared to an appropriate conventional technology.

(Rule 1200-22-2-.02, continued)

(7) Architectural or Engineering (A/E). Consultation, investigations, reports, or services for projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State of Tennessee. This includes, but is not limited to, preliminary engineering and construction engineering.

(8) Basic State Grant. Award of funds under the State Act calculated at 55 percent (plus any additional Innovative and/or Alternative determination), but not to exceed 75 percent of the sum of the total Step 3 allowable costs and the allowance.

(9) Building. The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

(10) Building completion. The date when all but minor components of a project have been built, all equipment is operational and the project is capable of functioning as designed.

(11) Collector sewer. The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service connections designed for connection with those facilities including:

(a) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and;

(b) Except as provided in (11) (c) of this section, pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective and are owned and maintained by the recipient; and

(c) This definition excludes other facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent and also excludes facilities associated with SAWS.

(12) Combined sewer. A sewer that is designed as a sanitary sewer and a storm sewer.

(13) Commissioner. The Commissioner of the Tennessee Department of Health and Environment or his duly authorized representatives.

(14) Construction. The erection, acquisition, alteration, reconstruction, improvement, or extension of wastewater treatment works, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, procedures and other similar action necessary in the building of wastewater treatment works, and the inspection supervision of the construction of wastewater treatment works.

(15) Construction Engineering. The services provided by A/E during the building of a project, and start-up services.

(16) Department. The Tennessee Department of Health and Environment.

(17) Design Allowance. The portion of a grant for the design, based on construction costs of a project which are allowable preliminary engineering costs

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(Rule 1200-22-2-.02, continued)

(18) Easement. The right which one person has to use the land of another for a specific purpose.

(19) Eligible. Qualified to receive a basic State grant or EPA grant.

(20) E.P.A. The United States Environmental Protection Agency.

(21) E.P.A. Grant. The award of funds under the provisions of Title II of the Art.

(22) Excessive infiltration/infow. The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effective analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

(23) Flow. Wastewater, as a volume or a rate, that is processed by a wastewater treatment works. The following apply:

(a) 24-hour flow: The total amount of wastewater that is processed by a wastewater treatment works in a 24-hour period.

(b) Design flow: The wastewater flow that is used in the design of individual components of wastewater treatment works and to which suitable peaking factors have been applied.

(c) Peak flow: The largest amount of wastewater that is processed by the wastewater treatment works in 24-hour period.

(d) Domestic flow: The portion of the 24-hour flow that consists primarily of sanitary wastes and that originates from residential-type sources.

(e) Commercial flow: That part of the 24-hour flow, sanitary as well as process, that originates from commercial sources as restaurants, motels, institutions, offices, airports, laundries, etc.

(f) Industrial flow: That part of the 24-hour flow, sanitary as well as process, that originates from an industry.

(g) Infiltration: Water other than wastewater than enters a sewer system, including sewer service connections and foundations drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

(h) Inflow: Water other than wastewater that enters a sewer system, including sewer service connections, from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

(24) Individual systems. Privately owned alternative wastewater treatment works, including but not limited to dual waterless/gray water systems, serving one or more principal residences, or small commercial establishments. Normally, these are onsite systems with localized treatment and disposal of wastewater, but may be systems utilizing small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. The systems can also include small diameter gravity sewers carrying raw wastewater to cluster systems.

(25) Industrial user. Any non-governmental, non-residential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under one of the following divisions:

Division A. Agriculture, Forestry, and Fishing
Division B. Mining
Division D. Manufacturing
Division E. Transportation, Communications, Electric, Gas and Sanitary Services
Division I. Services

(26) Infiltration/Inflow Correction. Techniques which eliminate excessive infiltration/inflow. This definition refers to excessive infiltration/inflow reduction techniques that do not involve extensive excavation and/or replacement. Techniques considered to be infiltration/inflow correction include but are not limited to the following:

(a) Pressure testing and sealing procedures;

(b) Excavation and replacement where documented and severe infiltration/inflow problems can be corrected. Specific examples are replacing or repairing manhole covers, repairing crushed pipe within an area of temporary or permanent ground water and replacement or repair of a sewer segment beneath a waterway.

(c) Sliplining.

(27) Innovative technology. Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost of the project when compared to an appropriate conventional technology.

(28) Interceptor sewer. A sewer which is designed for one or more of the following purposes:

(a) to intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor:

(b) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;

(c) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment; or

(d) To intercept an existing major discharge of a raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

(29) Major rehabilitation. Techniques which involve the removal of the existing pipes or manholes from the ground and replacing them with new ones. This definition is considered applicable for this Chapter under one or more of the following conditions:

(a) In locations where pipes or manholes have lost their structural integrity, such as pipes or manholes which are collapsed, crushed, broken or badly deteriorated and cracked;

(b) In cases where pipe size enlargement, change in grade and/or line realignment are needed in addition to pipe deficiency corrections; or

(c) In cases where the causes of damages to the existing pipes or manholes, including but not limited to corrosion, soil movement, and increasing traffic load, have been identified and it is desirable to prevent the recurrence of these damages by replacing the existing structures with new ones having better quality and greater strength.

(30) Municipality. Any utility district existing on July 1, 1984, county, incorporated town or city, or metropolitan government which has authority to administer a wastewater treatment works, or any combination of two (2) or more of the foregoing, acting jointly to construct a wastewater treatment works.

(31) Non-excessive infiltration. The quantity of flow which is less than 120 gallons per captia per day, domestic base flow plus infiltration, or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effective analysis.

(32) Non-excessive inflow. The rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include but are not limited to surcharging, backups, bypasses, and overflows.

(33) Operation and Maintenance. Activities required to assure the dependable and economical function of treatment works.

(a) Operation is the control of the unit processes and equipment which make up the treatment works. This include financial and personnel management records, laboratory control, process control, safety and emergency operation planning.

(b) Maintenance is the preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

(34) Planning/Design. Facilities planning consists of those necessary plans and studies which directly relate to wastewater facilities or treatment works needed to comply with the requirements of the departmental rules, sections 1200-22-2-.08 and 1200-22-6-.06. Design consists of those necessary drawings, plans and specifications which directly relate to wastewater facilities or treatment works needed to comply with the approved facilities plan.

(35) Preliminary engineering The preparation of Facilities Plan, preparation of engineering plans, writing specifications, value engineering, and related similar activities.

(36) Principal residence. The habitation of a family or household for at least 51 percent of the year. Second homes, vacation or recreation residences are not included in this definition.

(37) Priority ranking list. A list generated through the State Priority Ranking System Rules pursuant to T.C.A. §68-13-803 by which the Department ranks in descending order of priority all applicants for state and federal monies for construction of wastewater treatment works.

(38) Project. The activities or tasks the Commissioner identifies in the contract agreement for which the recipient may expend, obligate or commit funds.

(39) Project schedule. A timetable specifying the dates of key project events including but not limited to, the following: submittal of plans and specifications, advertising for bidding, notice to proceed, and building completion.

(Rule 1200-22-2-.02, continued)

(40) Replacement. Obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

(41) Reserve capacity. Capacity to treat, store, transport or dispose of more wastewater than the demand on the system at the time of construction.

(42) Sanitary sewer. A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

(43) Small Alternative Wastewater System (SAWS). Projects using the following types of alternative technology in small communities: on-site treatment systems, non-conventional collection systems, and any one of the twenty-one systems described in the EPA Publication FRD-10 (1980).

(44) Small community. Any municipality with a population of 3,500 persons or less, in accordance with 1980 federal census or any subsequent federal decennial census.

(45) State. State of Tennessee.

(46) State Act. The Wastewater Treatment Works Construction Grant Act of 1984, (as amended) T.C.A. §§68-13-801 et seq.

(47) State Revolving Fund (SRF) Assistance Grant. A grant made to a municipality in addition to an SRF loan for the financing of the building of wastewater treatment works.

(48) State Revolving Fund (SRF) Loan. Loan program as established in the Wastewater Facilities Act of 1987.

(49) Step 1. Planning phase of a treatment works including related services and supplies which result in a 201 Facilities Plan.

(50) Step 2. Design phase of a treatment works including related services and supplies.

(51) Step 3. Building phase of a treatment works including related services and supplies.

(52) Storm sewer. A sewer designed to carry only storm waters, surface runoff, street wash wasters and drainage.

(53) Supplemental State grant. A grant made to a municipality in addition to the basic State grant under the provisions of this Chapter or in addition to an EPA grant both made to municipalities for the financing of the construction of wastewater treatment works.

(54) Useful Life. The period during which a wastewater treatment works operates. This is not design life which is the period during which a wastewater treatment works is planned and designed to operate.

(a) For purposes of analyzing cost-effectiveness, the components of a wastewater treatment works shall have a useful life as follows:

1. Land-permanent;

2. Wastewater conveyance structures including but not limited to collection systems, outfall pipes, interceptors, force mains, and tunnels - 50 years;

3. Other structures, including but not limited to plant building, concrete process tankage, basins, and lift station structures - 50 years;

4. Process equipment - 20 years; and

5. Auxiliary equipment - 15 years.

(b) Other useful life periods will be acceptable when sufficient justification can be provided to the Commissioner. Where a system or a component is for interim service, the anticipated useful life shall be reduced to the period of interim service.

(55) User. A single municipal, domestic, commercial or industrial connection to a wastewater treatment works.

(56) User charge. A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of debt retirement, operation and maintenance, and replacement of such works.

(57) Utility district. A publicly owned utility district existing on July 1, 1984, or if created after that date, comprising at least five hundred (500) customer connections.

(58) Value engineering. A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high costs in a project in order to arrive at a cost savings without sacrificing the reliability or efficiency of the project.

(59) Wastewater treatment works. Any facility whose purpose is to store, treat, neutralize, stabilize, recycle, reclaim or dispose of municipal wastewater, including treatment or disposal plant, interceptors, outfall, and outlet sewers, pumping stations, equipment and furnishings thereof and their appurtenances which are necessary to accomplish the foregoing purposes; also included in this definition are collection systems which are to be built, repaired or extended for the purpose of ameliorating or correcting a pollution problem existing at the time of the application for the grant; providing, that collection systems, or parts thereof, otherwise are excluded from this definition and are not eligible for grants under the State Act and this chapter.

Authority: *T.C.A. §§68-13-801 et seq., 68-13-803, 68-13-804, 68-13-805, 68-13-809, 68-13-810, and 68-13-1003.* ***Administrative History:*** *Original rule filed August 30, 1985; effective September 29, 1985. Amendment filed July 14, 1987; effective August 29, 1987. Amendment file June 27, 1988; effective August 11, 1988. Amendment filed September 18, 1989; effective November 2, 1989.*

1200-22-2-.03 BASIC STATE GRANTS.

(1) General Provisions.

(a) The basic State grant share for each project shall be based on the sum of the total Step 3 allowable costs and the allowance established in the grant agreement. Except as provided elsewhere in this Rule, the basic State grant share shall be 55 percent of allowable costs for grant assistance awarded after July 1, 1984.

(b) The basic State grant share for eligible treatment or unit processes and techniques that the Commissioner determines meet the definition of innovative or alternative technology shall be 20 percent greater than the basic State grant share under subparagraph (a) of this Rule, but in no event shall the total basic State grant be greater than 75 percent. This increased basic State grant share depends on the availability of funds from the reserve except where the municipality is eligible for a supplemental State grant.

(c) Municipalities receiving an EPA grant shall not be eligible for a basic State grant but may be eligible for a supplemental State grant.

(d) The municipality is responsible for using competitive bidding for all construction contracts where practicable. This is accomplished by placing an advertisement for bids in a regional newspaper. The advertisement should run at least four (4) weeks prior to the bid date. The advertisement should be placed in the "Legal" classification of the newspaper and run for three (3) consecutive days, excluding holidays and weekends.

(e) State Basic and Supplemental grants shall be increased or decreased immediately after the building contract has been executed by the municipality where the initial contract cost is more or less than the amount of the original grant. State grant increases shall depend upon the availability of funds for the purpose and shall not be made prior to the execution of the building contract by the municipality and the contractor.

(2) Preliminary Engineering (PE) Grant.

(a) Where a municipality builds a wastewater treatment works using its own finances, the Commissioner may award a grant for preliminary engineering. Such grants shall be at the rate of 80% of the calculated design allowance based on construction costs of the project and shall be paid at the time of initiation of building of the project and such time shall be on or after July 1, 1984.

(b) Any municipality receiving a grant under the provisions of this Rule and subsequently receiving funds for preliminary engineering from other state or federal sources shall refund such grant to the State. Municipalities previously receiving such grants shall not be eligible for preliminary engineering grant allowances. If the municipality has received an advance of allowance from the EPA, the PE grant award will be reduced by the amount of that advance.

(c) Allowances for a PE grant will be calculated as follows:

1. The design allowance will be determined in accordance with Tables 1 and 2 of this rule;

2. Table 2 is to be used only in the event that the recipient received a Step 1 grant from the federal government;

3. The amount of the allowance is computed by applying the resultant allowance percentage to the initial allowable building costs per bid documents;

4. The amount of the allowance will be computed only once for each project, and will not be adjusted for subsequent construction cost increases or decreases; and

5. The recipient shall be reimbursed for preliminary engineering upon receipt of signed pay requests.

(Rule 1200-22-2-.03, continued)

TABLE I
Allowance for Facilities
Planning and Design

Building Cost	Allowance as a percentage of building cost*
$100,000 or less	14.4945
120,000	14.1146
150,000	13.6631
175,000	13.3537
200,000	13.1023
250,000	12.6832
300,000	12.3507
350,000	12.0764
400,000	11.8438
500,000	11.4649
600,000	11.1644
700,000	10.9165
800,000	10.7062
900,000	10.5240
1,000,000	10.3637
1,200,000	10.0920
1,500,000	9.7692
1,750,000	9.5523
2,000,000	9.3682
2,500,000	9.0686
3,000,000	8.8309
3,500,000	8.6348
4,000,000	8.4684
5,000,000	8.1975
6,000,000	7.9827
7,000,000	7.8054
8,000,000	7.6550
9,000,000	7.5248
10,000,000	7.4101
12,000,000	7.2159
15,000,000	6.9851
17,500,000	6.8300
20,000,000	6.6984
25,000,000	6.4841
30,000,000	6.3142
35,000,000	6.1739
40,000,000	6.0550
50,000,000	5.8613

*Use straight line interpolation between values.

(Rule 1200-22-2-.03, continued)

TABLE 2
Allowance for Design only

Building cost	Allowance as a percentage of building cost*
$100,000 or less	8.5683
120,000	8.3808
150,000	8.1570
175,000	8.0059
200,000	7.8772
250,000	7.7668
300,000	7.4991
350,000	7.3602
400,000	7.2419
500,000	7.0485
600,000	6.8943
700,000	6.7666
800,000	6.6578
900,000	6.5634
1,000,000	6.4300
1,200,000	6.3383
1,500,000	6.1690
1,750,000	6.0547
2,000,000	5.9574
2,500,000	5.7983
3,000,000	5.6714
3,500,000	5.5664
4,000,000	5.4769
5,000,000	5.3306
6,000,000	5.2140
7,000,000	5.1174
8,000,000	5.0352
9,000,000	4.9637
10,000,000	4.9007
12,000,000	4.7935
15,000,000	4.6655
17,500,000	4.5790
20,000,000	4.5054
25,000,000	4.3851
30,000,000	4.2892
35,000,000	4.2097
40,000,000	4.1421
50,000,000	4.0314

*Use Straight line interpolation between values

(3) Allowances.

(a) Allowances for Planning and Design will be provided under the following conditions:

1. Step 3 grant agreements will include an allowance for facilities planning and design of the project;

2. The estimated and final design allowance will be determined in accordance with Tables 1 and 2 of this rule;

3. Table 2 is to be used only in the event that the recipient received a Step 1 grant from the federal government;

4. The amount of the allowance is computed by applying the resultant allowance percentage to the initial allowable building cost multiplied by the appropriate eligible grant percentage. Specifically, the initial allowable building cost is the allowable cost of the following:

   (i) The initial award amount of all prime subagreements for building the project;

   (ii) The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project; and

   (iii) The purchase price of eligible real property; and

   (iv) The purchase price of eligible equipment.

5. The estimated allowance is to be based on the estimate of the initial allowable building cost;

6. The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases;

7. For any Step 3 project, the recipient may request payment of 50 percent of the State grant share of the estimated allowance immediately after notification of grant award. Final payment of the state grant share of the allowance may be requested in the first payment after the recipient has awarded all prime subagreements for building the project, received the Commissioner's approval for force account work, and completed the acquisition of all eligible real property;

8. The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs provided in subparagraph (3) (b) of this Rule; and

9. If the municipality has received an advance of allowance from EPA, the design allowance will be reduced by the amount of that advance.

(b) The allowance for Step 3 A/E services shall be calculated under the following conditions:

1. The estimated and final allowance for construction engineering will be determined in accordance with Table 3 of this Rule.

2. The amount of the allowance is computed by applying the resultant allowance percentage to the initial allowable building costs multiplied by the appropriate eligible grant percentage. The allowable building costs are defined in (3) (a) 4.

3. The estimated allowance is to be based on the estimate of the initial allowable building cost.

(Rule 1200-22-2-.03, continued)

4. The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

5. The recipient shall be reimbursed for A/E Services by monthly invoice.

TABLE 3
Allowance for Construction Engineering

Building Cost	Allowance as a percentage of building cost*
$100,000	8.0500%
	$8,050.00
200,000	7.5929%
	$15,186.00
300,000	7.3488%
	$22,046.00
400,000	7.1849%
	$28,729.00
500,000	7.0627%
	$35,313.00
1,000,000	6.7083%
	$67,083.00
2,000,000	6.3878%
	$127,757.00
2,500,000	6.2911%
	$157,277.00
3,000,000	6.2142%
	$186,425.00
3,500,000	6.1506%
	$215.271.00
4,000,000	6.0966%
	$243,863.00
4,500,000	6.0497%
	$272,237.00
5,000,000	6.0084%
	$300,419.00
10,000,000	5.7500%
	$575,000.00
15,000,000	5.6089%
	$841,335.00

*Use straight line interpolation between values.

(4) Innovative and Alternative (I/A) Technologies.

(a) Projects or portions of projects using unit processes or techniques which the Commissioner determines to be innovative or alternative technology in accordance with this rule may receive an additional 20% grant on the eligible I/A portions as determined by the Commissioner.

(b) A project will be determined to have an alternative technology if it is listed under the definition of alternative technology in rule 1200-22-2-.02.

(Rule 1200-22-2-.03, continued)

(c) A project will be determined to have an innovative technology if present worth cost of the eligible portions of the treatment works excluding conventional sewer lines is at least 15% less than that for the most cost effective alternative which does not incorporate innovative wastewater treatment processes and techniques; i.e., is no more than 85% of the present worth of the most cost-effective non-innovative alternative.

(d) In the present worth cost comparisons in subparagraph (4)(c) above, the following apply:

1. The non-innovative alternative must be clearly identified. Where an upgrading or expansion of an existing treatment works is encountered, only the portions associated with the increased capacity or level of treatment shall be considered in the cost analysis;

2. The cost-effectiveness of the non-innovative alternative will be judged against the best available state-of-the-art cost information;

3. The basis of the comparison is the present worth cost of the proposed innovative technology versus the lowest present worth cost of the non-innovative systems considered;

4. The cost comparison between the proposed innovative and non-innovative alternatives must be made on a completed treatment works basis, grant eligible portions excluding conventional sewer lines, even though the proposed potentially innovative portion is a sub-system or component;

5. In the comparative analysis, both systems must provide equivalent levels of pollutant control. Equivalency of the following factors shall be considered:

(i) Design minimum effluent quality standards;

(ii) System reliability with respect to effluent quality and residual disposal;

(iii) Residual treatment and disposal;

(iv) Level of toxic material control; and

(v) Environmental benefit

6. For cases where innovative sub-system components are analyzed or aggregated in the total plant cost comparison, only the cost of the innovative components and the appurtenant non-innovative equipment uniquely necessary for the proper functioning of the candidate innovative technology shall be included as a part of the component cost; and

7. A component is uniquely necessary if it would have to be modified or replaced to correct a failure of the innovative system.

(e) In the total system cost comparison, the present worth cost of the proposed design with innovative components must be a minimum of 15% less than that of the most cost effective non-innovative alternatives to qualify as innovative technology.

Authority: *T.C.A. §§68-13-801 et seq., 68-13-804, 68-13-805, 68-13-809, and 68-13-810.* ***Administrative History:*** *Original rule filed August 30, 1985; effective September 29, 1985. Amendment filed July 14, 1987; effective August 29, 1987. Amendment filed June 27, 1988; effective August 11, 1988. Amendment filed September 18, 1989; effective November 2, 1989.*

1200-22-2-.04 SUPPLEMENTAL STATE GRANTS.

(1) General Provisions.

(a) Municipalities receiving basic State grants on or after July 1, 1984, may eligible for supplemental State grants. Municipalities receiving EPA grants for projects on or after April 18, 1985, may be eligible for supplemental State grants.

(b) The amount of the supplemental State grant shall be based on the same allowable costs as the basic State grant or EPA grant. In no case shall the basic State grant plus the supplemental State grant or the EPA grant plus the supplemental State grant exceed 90% of the allowable costs of the project. All supplemental state grant awards shall not exceed $500,000.

(c) Supplemental State grants shall be increased or decreased immediately after the building contract has been executed by the municipality where the initial contract cost is more or less than the amount of the original grant. Supplemental State grant increases shall depend upon the availability of funds for the purpose and shall not be made prior to the execution of the building contract by the municipality and the contractor.

(2) Supplemental State Grant Amount Determination.

The Ability to Pay Indices (ATPI) is to be used in determining the amount of the supplemental State grants along with the corresponding percentage as stated below. The ATPI, as certified by the Department, is listed both by counties and towns. To be eligible for a supplemental State grant a municipality must have an ATPI of 97.63 or less.

The ranges of ATPI's and their corresponding percentage are shown below:

ATPI Range	Supplemental Grant Percentage
97.63 to 95.00	5
94.99 to 93.00	10
92.99 to 90.00	15
89.99 to 85.00	20
84.99 to 82.00	25
81.99 to 77.00	30
Below 77.00	35

Authority: *T.C.A. §§68-13-801 et seq., 68-13-804, 68-13-805, 68-13-809, and 68-13-810.* ***Administrative History:*** *Original rule filed August 30, 1985; effective September 29, 1985. Amendment filed July 14, 1987; effective August 29, 1987. Amendment filed June 27, 1988; effective August 11, 1988. Amendment filed September 18, 1989; effective November 2, 1989.*

1200-22-2-.05 STATE REVOLVING FUND (SRF) ASSISTANC EGRANT.

(1) General Provisions.

(a) Municipalities (except utility districts created after 7-1-84) receiving State Revolving Fund construction loans pursuant T.C.A. §68-13-1001 et seq., on or after January 1, 1989, may be eligible for an SRF Assistance grant provided the municipality has not received any other form of state assistance pursuant to T.C.A. §68-13-801 et seq.

(b) The SRF Assistance grant may be awarded to those small communities which have a population of 3500 or less than an ATPI of 110 or less.

(Rule 1200-22-2-.05, continued)

(c) Grants made under this section may only be awarded after a community has received an SRF construction loan. The grant recipient must adhere to all grant conditions and terms of the loan agreement. Additionally, failure to obtain Department approval for plans and specifications within six months or to initiate construction of the project within twelve months of grant award shall constitute ground for termination of the grant.

(d) The priority for obligating funds pursuant to this part shall be based upon the date of loan approval for the project, provided the recipient has applied for such assistance.

(e) Grants to be awarded under this section are contingent upon the availability of funds for that purpose.

(2) Grant Amount.

(a) The amount of the SRF Assistance grant may be based on reasonable estimated building costs. The final amount of the grant will be determined once based on actual building costs and will not be adjusted for subsequent cost increases or decreases.

(b) The amount of an SRF Assistance grant shall be 20% of the eligible building cost funded by the SRF loan which is the sum of the initial award amounts for all building contracts less the Reserve Capacity Cost Ratio (RCCR) except as provided in (2) (c).

(c) In no case shall the amount of the SRF Assistance grant exceed 20% of the eligible SRF loan building cost of $500,000, whichever is less. Any municipality receiving a grant under the provisions of this rule and subsequently receiving other forms of federal assistance may have the grant reduced to an amount based on 20% of the eligible building cost funded by the SRF loan.

(d) The SRF Assistance Grant shall be based on building cost alone and will include provisions for reimbursement of other project uses.

Authority: *T.C.A. §§68-13-801 et seq., 68-13-804, 68-13-805, 68-13-809, 68-13-810, 68-13-1004, and 68-13-1005.* ***Administrative History:*** *Original rule August 30, 1985; effective September 29, 1985. Amendment filed July 14, 1987; effective August 29, 1987. Amendment filed June 27, 1988; effective August 11, 1988. Amendment filed September 18, 1989; effective November 2, 1989.*

1200-22-2-.06 PRIORITY FOR THE OBLIGATION OF AVAILABLE FUNDS.

(1) General.

The state will award financial assistance to municipalities for the construction of wastewater treatment works under the provisions of T.C.A. §§68-13-801 et seq., only for projects on the State priority ranking list.

(2) Delayed Supplemental State Grants.

When State funds are insufficient to make supplemental State grants in any year, such supplemental State grants may be made from appropriations in later years with the oldest funded projects having first priority.

(Rule 1200-22-2-.06, continued)

(3) Partial Grants Prohibited.

When there are insufficient funds to make a grant for a project on the priority list, a partial grant shall not be made and a project shall not be bypassed because of insufficient funds for the purpose of funding a project for which available funds would be adequate. The partial funding of a grant amendment is also prohibited.

(4) Priorities for the Obligation of State Funds.

The priority for the obligation of State funds appropriated for the purpose of implementing the provisions of T.C.A. §68-13-801 et seq., and T.C.A. §68-13-1001, et seq., shall be in accordance with the following:

(a) The first priority shall be to provide the required 20% match for the State Revolving Fund's capitalization grant received annually from the Environmental Protection Agency (EPA).

(b) On any given date after obligations under the first priority have been met, the balance of available funds may be obligated under a second priority, which is to provide small low income communities with SRF Assistance grants.

(c) When the second priority for funds have been met, the balance of available funds may be obligated under a third priority which is to provide increases as necessary for existing state grants.

(d) When the third priority for funds has been met, any balance of available funds will be provided to subsidize the low interest rates of approved SRF loan projects.

(e) When the fourth priority for funds has been met, the balance of available funds may be obligated under a fifth priority which is for the purpose of making supplemental State grants to EPA grants as provided in Rule 1200-22-2-.04. Obligations under the fourth priority shall have been met when supplemental State grants have been made for all EPA projects which will be funded in a given Federal fiscal year or the amount required for supplemental State grant has been determined by the preparation of EPA grant offers, but such grants have not been accepted by municipalities. Within this priority the funding shall be based on the priority ranking of the EPA grant projects which is determined by the priority ranking list.

(f) When the fifty priority for funds has been met, any balance of available funds may be used for basic State grants under the provisions of this Chapter or basic State grants plus supplemental State grants.

Authority: *T.C.A. §§68-13-801 et seq., 68-13-804, 68-13-805 68-13-809, 68-13-810, 68-13-1004, and 68-13-1005.* ***Administrative History:*** *Original rule filed August 30, 1985; effective September 29, 1985. Amendment filed July 14, 1987; effective August 29, 19987. Amendment filed June 27, 1988; effective August 11, 1988. Amendment filed September 18, 1989; effective November 2, 1989.*

1200-22-2-.07 ELIGIBILITY

(1) Municipalities may receive assistance under the State Act for the construction of wastewater treatment works.

(2) Grants shall be made only for those wastewater treatment works projects that qualify for funding based on the Department's priority ranking list.

(Rule 1200-22-2-.07, continued)

(3) Basic state grants cannot be used to fund any project for which a federal EPA grant was awarded.

(4) No portion of a grant may be used to acquire land or pay any costs associated with the acquisition of land; provided, however, that expenditures for land that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment may be eligible for grant participation.

(5) No grant under the State Act shall be made to provide reserve capacity except in eligible interceptors and collection systems for communities with population less than 3,500 according to the 1980 Federal Census or any subsequent federal decennial census.

(6) Treatment units and appurtenances that are necessary to meet the requirements of the Commissioner shall be eligible for grant participation.

(7) Any work done prior to the date of basic State grant award shall be ineligible unless approved in writing by the Commissioner prior to initiation of such work.

(8) Replacement costs requiring additional grant funds will not be made available for failed, inoperative or otherwise inadequate wastewater treatment works which were considered and funded as Innovative or Alternative technology.

(9) Any contractor or A/E debarred by either the State or the Federal government cannot participate in a project which involves state funds governed by this Rule.

(10) Participation in the purchase of land shall be limited to the cost determined by a Certified Appraiser. Where the cost exceeds $100,000 a second appraisal is required and final eligibility shall be determined by the Commissioner

(11) A municipality may use its own manpower and/or equipment to build all or part of the project. The method by which this is to be accomplished must be approved by the Commissioner. When the project costs exceed $25,000, prior approval by the Commissioner shall be obtained.

(12) Upon award of the building contract under a basic State grant and at the time of increasing or decreasing the grant amount as the result of such award, a contingency item may be included in the grant amount not to exceed 5% of the building cost.

Authority: *T.C.A. §§68-13-801 et seq., 68-13-804, 68-13-805, 68-13-809, and 68-13-810.* ***Administrative History:*** *Original rule filed August 30, 1985; effective September 29, 1985. Amendment filed June 27, 1988; effective August 11, 1988. Amendment filed September 18, 1989; effective November 2, 1989.*

1200-22-2-.08 GRANT APPLICATIONS

(1) Applicants for all grant assistance must submit applications on forms provided by the Commissioner.

(2) The Commissioner shall review grant applications to ensure that they are completed and shall inform the application in writing of the determination.

(3) A complete Basic State Grant application for the building of the treatment works will consist of at least the following:

(a) An approved facilities plan;

(b) Certification of adequate public participation;

(Rule 1200-22-2-.08, continued)

(c) Final construction drawings and specifications;

(d) Project schedule; and

(e) If Step 3 assistance includes acquisition of eligible real property, a plat which shows the legal description of the property to be acquired, a preliminary layout of the distribution and drainage system, and an explanation of the intended method of acquiring the real property.

Authority: *T.C.A. §§68-13-801 et seq., 68-13-804, 68-13-805, 68-13-809, and 68-13-810.* ***Administrative History:*** *Original rule filed August 30, 1985; effective September 29, 1985. Amendment filed July 14, 1987; effective August 29, 1987. Amendment filed September 18, 1989; effective November 2, 1989.*

1200-22-2-.09 RELATED GRANT APPLICATION REQUIREMENTS.

These requirements exclude SRF Assistance grants. The SRF Assistance grant application requirements shall be in accordance with the loan application procedures under Rule 1200-22-6-.06.

(1) Facilities Planning.

(a) General Facilities planning consists of those necessary plans and studies which directly relate to treatment works needed to protect water quality and public health. Facilities planning will investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, it will demonstrate that, except for innovative and alternative technology, the selected alternative is cost effective i.e., is the most economical means of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. For sewered communities with a population of 10,000 or less, consideration must be given to appropriate low cost technologies such as facultative ponds, trickling filters, oxidation ditches, land disposal or overland-flow land treatment; and for the unsewered portions of communities of 10,000 or less, consideration must be given to onsite systems. The facilities plan will also demonstrate that the selected alternative is implementable from legal, institutional, financial and management standpoints.

(b) Facilities Plan contents. A completed Facilities Plan must include:

1. A description of both the proposed treatment works, and the completed waste treatment system of which it is a part;

2. A cost-effective analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for the cost-effective analysis shall be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The discount rate established by EPA for the construction grants program shall be used in the cost-effective analysis. A cost effective analysis must include:

(Rule 1200-22-2-.09, continued)

(i) The description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works become operational. This includes letters of intent from significant users and industries intending to increase their flows or relocated in the area, documenting capacity needs and characteristics for existing or projected flows;

(ii) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to building new facilities;

(iii) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(iv) A consideration of systems with revenue generating applications;

(v) An evaluation of opportunity to reduce the use of energy or to recover energy; and

(iv) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users.

3. Demonstration of the non-existence or possible existence of excessive infiltration/inflow in the sewer system;

4. An analysis of the potential open space and recreation opportunities associated with the project;

5. An evaluation of the environmental impacts of alternatives;

6. An evaluation of the water supply implications of the project;

7. A concise description of the selected alternative with an appropriate level of detail, and at least the following;

(i) Relevant design parameters;

(ii) Estimated capital building and operation and maintenance costs, and a description of the manner in which local costs will be financed;

(iii) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

(iv) Cost impacts on wastewater system users; and

(v) Institutional and management arrangements necessary for successful implementation.

8. The facilities plan shall be submitted to the Commissioner for review. Potential grant applicants must confer with Department reviewers in the initial stages of the facilities planning process.

(2) Sewer Use Ordinance

(a) The applicant's sewer use ordinance shall prohibit any new connections from inflow sources into the treatment works and shall require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance shall also require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts of concentrations that endanger public safety and physical integrity of the treatment works or preclude the selection of the most cost-effective alternative for wastewater treatment sludge disposal.

(b) After July 1, 1984, no Step 3 grant pursuant to the State Act shall be made unless the following pretreatment requirements have been satisfied:

1. A sewer use ordinance in accordance with the format prescribed 40 CFR Part 403 must have been submitted and approved by the Commissioner and adopted by the recipient; and

2. The applicant must document to the satisfaction of the Commissioner that pretreatment facilities have been constructed or that legally binding commitments exist between the applicant and any discharger(s) to the recipient's proposed wastewater treatment facilities which insure that pretreatment will be provided on or before the date of completion of the proposed wastewater treatment facilities. For the purpose of this section pretreatment shall be defined as that level of treatment required by each discharger to the recipient's sewerage system which is necessary to meet the Publicly Owned Treatment Work (POTW) protection criteria for POTW unit operations including the collection system.

(3) User Charge System

(a) General. Unless a grant is solely for the acquisition of eligible land, the applicant for a basic State grant or a supplemental State grant must obtain the Commissioner's approval for its user charge system. If the applicant has a user charge system in effect at the time of the application, the applicant shall demonstrate that it meets the provisions of this section or amend it as required by these provisions.

(b) Scope of the user charge. The user charge system shall provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the facility shall pay for such increased cost. The user charge system must be designed to produce adequate revenues to provide for the following expenditures:

1. Operation and maintenance expenses;

2. Debt retirement; and

3. Depreciation of the wastewater treatment works over its useful life, unless the generally accepted accounting principles do not require such.

(c) Actual use. A recipient's user charge system shall be based on actual use, or estimated use, of wastewater treatment services. Each user or user class must pay its proportionate share of the costs described in the rule 1200-22-2-.09 (3)(b) incurred in the recipient's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes.

(d) Notification. Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill or other means acceptable to the Commissioner, of the rate and that portion of the user charge that is attributable to wastewater treatment services.

(e) Financial Management System. Each user charge system must include a financial management system that will accurately account for revenues generated by the system and expenditures for the items in part (b) above. This financial management system shall be based on an adequate budget identifying the basis for determining the annual operation and maintenance expenses, debt retirement, depreciation of the wastewater treatment works, and reserve account contributions.

(f) Charges for operation and maintenance for infiltration/inflow. The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users, be distributed among all users based upon either of the following:

1. In the same manner that it distributes the costs for their actual use; or

2. Under a system which uses one of any combination of the following factors on a reasonable basis:

(i) Flow volume of users;

(ii) Land area of the user, and ad valorem; or

(iii) Number of hookups or discharges of the users.

(g) Use of revenue. After completion of a project, revenue from the project including but not limited to, sale of a treatment-related-by-products; lease of the land; or sale of crops grown on the land purchased under the grant agreement, shall proportionately reduce all user charges.

(h) Adoption of system. The user charge system must be legislatively enacted by the recipient. If the project will serve two or more municipalities, the recipient shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works. At a minimum they must include the basis upon which cost are allocated, the formula by which costs are allocated and the manner in which the cost allocation system will be administered. The Department may waive this requirement provided the applicant can demonstrate:

1. That such an agreement is already in place; or

2. Evidence of historic service relationships for water supply, wastewater or the other services among the affected communities regardless of the existence of formal agreements; and

3. That the financial strength of the supplier agency is adequate to continue the project even if one or more of the proposed customer agencies fail to participate.

(i) Inconsistent agreements. The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of these provisions.

(j) Previous debt. The reserve account required under this Rule shall be not be used toward offsetting debts incurred prior to the funding of the project.

(Rule 1200-22-2-.09, continued)

(k) Approval of user charge system. Plans and specifications for the project will not be approved until the recipient has developed an approvable user charge system. If the project is for Step 3 grant assistance, unless it is solely for acquisition of eligible land, the recipient must obtain the Commissioner's approval of its user charge system. If the recipient has a user charge system in effect, the recipient shall demonstrate to the Commissioner's satisfaction that it meets the requirements of this provision.

(4) Easements. The recipient must own easements and/or land, or have taken condemnation proceedings needed to construct the project before plans and specifications will be approved by the Commissioner.

(5) Plans and Specifications. All plans and specifications must be in accordance with the Facilities Plan/Engineering Report as approved by the Department, and should be consistent with the State Design Criteria for Sewage Works.

Authority: *T.C.A. §§68-13-801 et seq., 68-13-804, 68-13-805, 68-13-809, and 68-13-810.* ***Administrative History:*** *Original rule filed August 30, 1985; effective September 29, 1985. Amendment filed July 14, 1987; effective August 29, 1987. Amendment filed June 27, 1988; effective August 11, 1988. Amendment filed September 18, 1989; effective November 2, 1989.*

1200-22-2-.10 GRANT AGREEMENT

(1) The grant agreement will be a legally binding contract between the State and the recipient. The agreement will contain general conditions and may, if necessary, contain special conditions.

(2) The general conditions will be requirements of law, regulations and policies of the State of Tennessee relative to the State Act as defined under this Chapter.

(3) The special conditions of the grant agreement will relate to specific provisions unique for an individual project to include, but not limited to, time schedules, and performance requirement6s.

Authority: *T.C.A. §§68-13-801 et seq., 68-13-804, 68-13-805, 68-13-809, and 68-13-810.* ***Administrative History:*** *Original rule filed August 30, 1985; effective September 29, 1985. Amendment filed September 18, 1989; effective November 2, 1989.*

1200-22-2-.11 GRANTS ADMINISTRATION AND GRANT CONDITIONS

(1) Project By-Pass. The Commissioner may by-pass the funding of projects on the fundable portion of the priority list as follows:

(a) The potential recipient submits to the Commissioner a written statement endorsing the by-pass; or

(b) The potential recipient fails to submit information within the time frame required by certified, written notice from the Commissioner.

(2) Grant Amendments. Grant amendments may be made in circumstances that include, but are not limited to the following:

(a) Grant amendments may be made to basic State grants to cover the difference between the original construction cost estimate and the contract price.

(b) Grant amendments may be made to cover the provisions of Rule 1200-22-2-.11(6).

(c) Grant amendments may be made to basic State grants to cover increased eligible cost for Step 3 engineering services or engineering services during initiation of operation.

(d) Grant amendments may be made to supplemental grants to reflect changes in eligible cost.

(3) Inspections.

(a) The recipient shall provide continuous inspections during building by qualified inspectors in sufficient numbers to insure the project complies with approved plans and specifications.

(b) The Commissioner will conduct interim building inspections to determine compliance with approved plans and specifications and grant agreement, as appropriate.

(c) The interim inspection reports may be used for determining the amount of the Step 3 grant payment.

(d) The recipient shall notify the Commissioner in writing when the building of the project is complete so that operation and maintenance and final inspections can be made by the Commissioner.

(4) Operation and Maintenance.

(a) The recipient must assure economical and effective operation and maintenance, including replacement, of the treatment works.

(b) The Commissioner shall not pay more than 90 percent of the Basic State grant share of any project unless the recipient has furnished and the Commissioner has approved an operation and maintenance manual.

(5) Grant Payments.

(a) Documentation. The Commissioner shall pay the State grant share of the appropriate allowance, preliminary and/or construction engineering and/or the allowable project costs incurred and as certified and documented in accordance with Tennessee Outlay Report and Request for Reimbursement for Construction Programs Form as provided by the Commissioner.

(b) Failure to comply with Plans and Specifications. Payments shall be limited to eligible work that complies with plans and specifications approved by the Commissioner.

(c) Adjustment. The Commissioner may at any time review and audit requests for payment and make adjustments for, but not limited to, mathematical errors, items not built or purchased, unacceptable construction, and construction not in accordance with plans and specifications.

(d) Refunds, Rebates and Credits. The State grant share of any refunds, rebates, credits, or other amounts, including any interest, that accure to, or are received by the recipient of the project, and that are properly allocable to costs for which the recipient has been paid under a grant, must be credited to the State. Examples include rebates for prompt payment and sales tax refunds. Reasonable expenses incurred by the recipient securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Commissioner.

(e) Release. By its acceptance of final payment, the recipient releases and discharges the State, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to exceptions previously specified in writing between the Commissioner and the recipient.

(f) Closure, The grant shall be closed at the end of the performance evaluation period per rule 1200-22-2-.11(7) as determined by the Commissioner and final audit by the Comptroller of the Treasury. No additional grant payments shall be made after the grant is closed. The findings of the audit shall be used in determining the final grant amount by the Commissioner.

(g) Files and Records. All files and records pertaining to the project shall be maintained by the recipient throughout the project and made accessible to the Commissioner and the Comptroller. These files and records must be retained by the recipient for at least three (3) years after project closure.

(6) Change Orders.

(a) Change in the Step 3 project work, except as provided in subparagraph (b) of this rule that are consistent with objectives of the project and that are within the scope of the grant agreement, do not require the execution of a formal grant amendment before the recipient's implementation of the change. However, the Commissioner will determine the eligibility and reasonableness of cost for all change orders funded with a basic grant, or a grant increase.

(b) The recipient must receive from the Commissioner a grant amendment before implementing changes which:

1. Alter the type of wastewater treatment provided by the project; or

2. Significantly delay or accelerate the project schedule.

(7) Project Performance.

(a) The recipient shall notify the Commissioner in writing of the actual date and initiation of operation.

(b) The recipient shall hire an individual or firm with proven expertise in wastewater treatment plant operation and maintenance to provide the following services during the start-up period following the initiation of operation:

1. Direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;

2. Train or provide for training of operating personnel and prepare curricula and training material for operating personnel; and

3. Advise the recipient whether the project is meeting the project performance standard.

(c) Immediately after the start-up period, the recipient shall certify to the Commissioner whether the project meets the project performance standards. If the Commissioner or the recipient concludes that the project performance standards, the recipient shall submit the following:

1. A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;

2. The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

3. The schedule date for certifying to the Commissioner that the project is meeting the project performance standards.

(d) The recipient shall take corrective action necessary to bring a project into compliance with the project performance standards at its own expense.

(e) Reservation of Rights.

1. Nothing in this rule prohibits the recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or

2. Nothing in this rule affects the Department's right to take remedial action, including but not limited to administrative enforcement action and actions for breach of contract against a recipient that fails to carry out its obligations under this chapter.

(8) Effect of Approval or Certification of Documents. Review or approval of facilities plans, design drawings and specifications or other documents by or for the Commissioner does not relieve the recipient of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works as required by law, regulations, permits, and good management practices.

(9) Value Engineering. During the design of the project, the Commissioner will determine when and to what degree value engineering will be conducted. Those value engineering determinations recommended by the Commissioner shall be implemented and eligibility shall be limited to a project scope that includes those value engineering determinations.

If any provision of this regulation or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect her provisions or applications of the regulation which can be given effect without the invalid provision, and to that end the provisions of this regulation declared to be severable.

Authority: *T.C.A. §§68-13-801 et seq., 68-13-804, 68-13-805, 68-13-809, and 68-13-810.* ***Administrative History:*** *Original rule filed August 30, 1985; effective September 29, 1985. Amendment filed July 14, 1987; effective August 29, 1987. Amendment filed June 27, 1988; effective August 11, 1988. Amendment filed September 18, 1989; effective November 2, 1989.*